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10 The Honorable Thomas O. Rice  
11  
12 UNITED STATES DISTRICT COURT  
13 EASTERN DISTRICT OF WASHINGTON  
14  
15 MILAN RICHARD HAVLIK, JR.,  
16 Plaintiff,  
17  
18 v.  
19 BILL ROBERTS, TAMMI DENNEY  
20 and RANDAL CLINE,  
21 Defendants.  
22  
23  
24  
25

**NO. 2:22-cv-00096-TOR**  
**DEFENDANTS TAMMI  
DENNEY - BILL ROBERTS -  
AND RANDAL CLINE'S  
RESPONSE IN OPPOSITION  
TO PLAINTIFF'S MOTION  
FOR PRELIMINARY  
INJUNCTION PURSUANT TO  
FED. R. CIV. PROC. 65(a)  
(ECF NO. 49)**

**Noted for Hearing On:**  
**December 19, 2022**  
**Without Oral Argument**

26  
27 COME NOW, above-named Defendants TAMMI DENNEY, BILL  
28 ROBERTS, and RANDAL CLINE, above-named, by and through their attorney  
29  
30

DEFENDANTS' RESPONSE IN  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION - Page 1

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1 of record, Patrick McMahon of Carlson & McMahon, PLLC, and hereby  
2 respectfully submit the following response in opposition to Plaintiff's Motion for  
3 Preliminary Injunction (ECF No. 49).  
4

5 **I. PROCEDURAL HISTORY**  
6

7 On May 3, 2022, the Plaintiff filed his Prisoner Civil Rights Complaint Pro  
8 Se. (ECF No. 1). On June 2, 2022, the Court entered an Order denying motions  
9 for appointment of counsel for Plaintiff, identifying him as a pretrial detainee  
10 confined at the Okanogan County Jail, and an individual who was proceeding *Pro*  
11 *Se* and *In Forma Pauperis*. (ECF No. 19). In the Order, the Court also noted that  
12 Plaintiff's motions for appointment of counsel, ECF Nos. 5 and 13, were denied  
13 as well. *Id.* On July 12, 2022, the Court allowed Plaintiff a second opportunity to  
14 amend or voluntarily dismiss his Complaint. (ECF No. 28). On July 27, 2022,  
15 Plaintiff filed his Second Amended Prisoner Civil Rights Complaint. (ECF No.  
16 30). The Defendants, on September 15, 2022, filed their Answer to Plaintiff's  
17 Amended Complaint. (ECF No. 38).  
18

19 The Plaintiff's present Complaint is a Motion for a Preliminary Injunction  
20 Pursuant to Rule 65(a) (ECF No. 49).  
21  
22

## II. STATEMENT OF FACTS

The Plaintiff proceeding *Pro Se* and *In Forma Pauperis* was booked into the Okanogan County Jail on February 9, 2022, on charges of: Illegal Possession of Firearms, First Degree – 2 Counts of Identity Theft Second Degree – 2 Counts Forgery – Possession of Stolen Property First Degree and Trafficking in Stolen Property First Degree. (See *Declarations of Sergeant Bill Roberts and Sergeant Randal Cline*).

Subsequent to booking, on February 19, 2022, Plaintiff filed a grievance requesting a kosher diet. *Id.* On February 22, 2022, the Plaintiff was interviewed regarding his religious beliefs and diet. The religious questionnaire was used to determine if Plaintiff's claim was valid and he required a special diet. *Id.* The Plaintiff failed the questionnaire and was denied his request. *Id.* The decision was grieved by the Plaintiff and he stated he had been provided a Kosher Diet while incarcerated at the Florida Department of Corrections (DOC). *Id.* Jail staff attempted to contact Florida DOC with no response. *Id.*

The Plaintiff, nevertheless, was given the benefit of the doubt and placed on the jail's Least Restrictive Kosher option. *Id.* The Least Restrictive Kosher option provides that the Plaintiff is not given any meal that contains pork. *Id.* The Plaintiff agreed to the diet and his grievance was closed. *Id.*

1           Irrespective of his agreement, the Plaintiff filed another grievance on  
 2 March 29, 2022, grieving his diet placement as previously agreed to. *Id.* Again,  
 3 irrespective of his complaints, the Plaintiff has placed orders through the jail  
 4 Commissary purchasing items that are not kosher. *Id.*

7           The Okanogan County Jail has an inmate population of approximately  
 8 seventy-one (71). (See *Declaration of Sergeant Bill Roberts*). The jail kitchen  
 9 which provides meals to inmates is approximately 744 square feet and is not  
 10 physically equipped to prepare kosher meals. *Id.* As such, the jail accommodates  
 11 by providing the Least Restrictive Alternative diet as described previously. (See  
 12 *Declaration of Sergeant Bill Roberts*).  
 13

16           Finally, Sergeant Roberts of the Okanogan County Jail contacted local jails  
 17 located in Chelan County and Ferry County which have similar Least Restrictive  
 18 diet plans of “no pork” to accommodate inmates requesting a kosher diet.  
 19

21           **A. Preliminary Injunction should be denied.**

22           A preliminary injunction is an extraordinary remedy never awarded as a  
 23 right. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A plaintiff  
 24 seeking a preliminary injunction must establish that he is likely to succeed on the  
 25 merits, that he is likely to suffer irreparable harm in the absence of preliminary  
 26

1 relief, that the burden of equities tips in his favor, and that an injunction is in the  
 2 public interest. *Id. at 20.*

3  
 4 If the record before the Court “consists of largely general assertions which  
 5 are substantially controverted by counter affidavits, the Court should not grant [a  
 6 preliminary injunction] unless the moving party makes a further showing  
 7 sufficient to demonstrate that he will likely succeed on the merits.” *K-2 Ski Co. v.*  
 8  
 9 *Head Ski Co.*, 467 F.2d 1087, 1088-89 (9<sup>th</sup> Cir. 1972). A preliminary injunction  
 10 is not a preliminary adjudication on the merits: It is an equitable device for  
 11 preserving the status quo and preventing the irreparable loss of rights before  
 12 judgment. *Textile Unlimited, Inc. v. A. BMH and Co., Inc.*, 240 F.3d 781, 786 (9<sup>th</sup>  
 13 Cir. 2001).

14  
 15 Here, Plaintiff never informed the jail staff that he had a religious dietary  
 16 restriction on his jail intake questionnaire form. Moreover, he presents no facts  
 17 that he is likely to succeed on the merits of his claim. First, although Plaintiff  
 18 was unable to persuade staff as to the veracity of his belief in the Jewish Faith,  
 19 and having failed a cursory verbal examination as to the tenets of that faith, the  
 20 jail, nevertheless, attempted to contact the Florida Department of Corrections  
 21 (DOC) to verify whether he had received kosher meals while incarcerated, but no  
 22 response was provided. The jail gave Plaintiff the benefit of the doubt and placed  
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1 him on a “no pork” accommodation diet. The Plaintiff, despite agreeing to this  
 2 alternative, reneged on the agreement and continued furthering his complaints  
 3 regarding his diet. Sergeant Roberts of the jail staff personally inquired of jails  
 4 located in Chelan County and Ferry County and learned that both facilities  
 5 provide a “no pork” diet regimen similar to the one utilized by the Okanogan Jail  
 6 for the Plaintiff in the present case.

7 To the extent that Plaintiff contends that his rights have been violated  
 8 because the jail provided an alternative “no pork” diet, he is incorrect. “Inmates  
 9 ... have the right to be provided with food(s) sufficient to sustain them in good  
 10 health that satisfies the dietary laws of their religion.” *McElyea v. Babbitt*, 833  
 11 F.2d 196, 198 (9<sup>th</sup> Cir. 1987). “A prisoner’s ‘free exercise rights’ ... are limited  
 12 by the fact of incarceration and may be curtailed in order to achieve legitimate  
 13 correctional goals or to maintain prison security.” *McElyea*, 833 F.2d at 197.  
 14

15 In the Ninth Circuit, the interests in a simplified food service may allow an  
 16 incarcerating facility to provide a pork-free diet, instead of a fully kosher diet, to  
 17 an Orthodox Jewish inmate. *Ward v. Walsh*, 1 F.3d 873, 877-79 (weighing the  
 18 free exercise rights of an Orthodox Jewish prisoner to a kosher diet against  
 19 budgetary and administrative concerns of the prison). Although the jail, in their  
 20 response declaration(s), points out that the cooking facility is limited in square  
 21

1 footage space, it also points out that it does not have the infrastructure to prepare  
2 kosher food products. The Plaintiff provides no evidence that preparing kosher  
3 diets is feasible under current budget and cooking facilities. Moreover, the  
4 Plaintiff makes no assertions that the costs of providing kosher foods to pretrial  
5 detainees is insignificant or that the jail was accommodating the dietary  
6 requirements of other religious groups. In fact, the jail does not.  
7  
8

9  
10 Additionally, it appears inconsistent that the Plaintiff has been observed  
11 purchasing non-kosher food items and is presumably consuming the same, despite  
12 his protestations that an accommodative “no pork” diet does not fulfill his  
13 religious requirements.  
14  
15

16 Further, other than generalized statements that he will suffer irreparable  
17 harm, no evidence of the alleged harm has been produced to the Court. Further,  
18 to the extent that the Plaintiff has sustained any medical injury or damage as a  
19 result of his diet, he presents no evidence that he has not been provided  
20 appropriate medical treatment from the jail, nor has he provided evidence of any  
21 medical abnormality related to the allegations contained in his temporary  
22 restraining order complaint.  
23  
24

25 Finally, the jail staff takes particular care in making sure that meals served  
26 to the Plaintiff comply with their commitment to an alternative “no pork” diet  
27  
28

regimen. Plaintiff's picture is located on his tray and the cooks in the jail facility rely on ingredients printed on food labels to ensure that "no pork" is provided to the Plaintiff. In short, other than conclusory allegations that he is likely to suffer, or has been suffering, irreparable harm in the absence of preliminary relief, he presents no evidence that he is likely to succeed on the merits of the underlying complaint and, consequently, his Motion for a Preliminary Injunction should be denied.

### III. CONCLUSION

For the reasons and evidence previously set forth, the Defendants respectfully request that Plaintiff's Motion for Preliminary Injunction (ECF No. 49) be denied.

RESPECTFULLY SUBMITTED THIS 1<sup>st</sup> day of December, 2022.

## CARLSON & McMAHON, PLLC

By /s/ Patrick McMahon  
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WCRP05-002538\PL\_E RESP TO MTN FOR PRELIM INJUNCTION-1201??

**DEFENDANTS' RESPONSE IN  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION - Page 8**

1  
2                   **CERTIFICATION OF SERVICE**  
3

4                   I declare under penalty of perjury under the laws of the State of  
5 Washington that on December 1, 2022, I electronically filed the foregoing with  
6 the Clerk of the Court for the United States District Court for the Eastern District  
7 of Washington using the CM/ECF system which will send notification of such  
8 filing to:

9  
10                  And I certify that I have mailed by United States Postal Service the foregoing to  
11 the following non CM/ECF participants:

12  
13                  Milan Richard Havlik, Jr., 119364  
14                         Okanogan County Jail  
15                         149 N. 4<sup>th</sup> St.  
16                         Okanogan, WA 98840

17  
18                  Signed at Wenatchee, Washington on December 1, 2022.

19  
20                  \_\_\_\_\_  
21                  /s/ Patrick McMahon  
22                  PATRICK MCMAHON, WSBA #18809  
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